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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,069	04/19/2004	Richard F. Bergen	D/04	2373
7590	08/11/2004		EXAMINER	
William A. Henry, II 14 Barrington Hills Pittsford, NY 14534			HARRINGTON, ALICIA M	
			ART UNIT	PAPER NUMBER
			2873	

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/827,069	BERGEN, RICHARD F.	
	Examiner	Art Unit	
	Alicia M Harrington	2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 April 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,7 is/are rejected.
- 7) Claim(s) 2-6 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 19 April 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>0404</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Information Disclosure Statement

1. The Examiner has considered the information disclosure statement filed on 4/19/04.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation "said reflecting surface" in line 1. There is insufficient antecedent basis for this limitation in the claim.

The claim will be considered as best understood by the Examiner.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rando (US 6,073,354).

Regarding claim 1, Rando discloses a line producing apparatus, comprising:

a laser source (see figure 6 and 12; 52,53;col.3, lines 1-30) adapted to produce radiant energy;

a laser output (see figure 12, col. 4, lines 10-25; #122)altering device, and wherein radiant energy projected from said laser source into said laser output altering device emerges from said laser output altering device in a predetermined plane; and

Rando also discloses the plumb bob (see abstract) with said laser output altering device attached, thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the plumb bob a single structure where the laser altering device is positioned between portions of said plumb bob, since Rando teaches integrating the structure and it has been held that forming in one piece an article which has formerly been form in two pieces and put together involves only routine skill in the art (Howard V. Detroit Stove Works, 150 U.S. 164 (1893)).

Allowable Subject Matter

6. Claims 2-6 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claim 7 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter: Regarding claim 2, prior art taken either singularly or in combination fails to anticipate or fairly suggest the limitations of the dependent claims, in such manner that a rejection under 35 U.S.C 102 or 103 would be proper. The prior art fails to teach a

combination of all the claimed features as presented in independent claims, which at least include a mirror, and wherein radiant energy from said laser source is projected into said mirror and then into said laser altering device as claimed.

Regarding claim 4, prior art taken either singularly or in combination fails to anticipate or fairly suggest the limitations of the dependent claims, in such manner that a rejection under 35 U.S.C 102 or 103 would be proper. The prior art fails to teach a combination of all the claimed features as presented in independent claims, which at least include wherein said laser output altering device is in the form of a hollow tube as claimed.

Regarding claim 5, prior art taken either singularly or in combination fails to anticipate or fairly suggest the limitations of the dependent claims, in such manner that a rejection under 35 U.S.C 102 or 103 would be proper. The prior art fails to teach a combination of all the claimed features as presented in independent claims, which at least include wherein said laser output altering device is in the form of a hollow tube within a hollow tube as claimed.

Regarding claim 6, prior art taken either singularly or in combination fails to anticipate or fairly suggest the limitations of the dependent claims, in such manner that a rejection under 35 U.S.C 102 or 103 would be proper. The prior art fails to teach a combination of all the claimed features as presented in independent claims, which at least include wherein said laser output altering device is in the form of a fiber optic rod as claimed.

Regarding claim 7, prior art taken either singularly or in combination fails to anticipate or fairly suggest the limitations of the dependent claims, in such manner that a

rejection under 35 U.S.C 102 or 103 would be proper. The prior art fails to teach a combination of all the claimed features as presented in independent claims, which at least include wherein said reflecting surface of said mirror is spaced from said laser output altering device as claimed.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia M Harrington whose telephone number is 571 272 2330. The examiner can normally be reached on Monday - Thursday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Epps can be reached on 571 272 2328. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



AMH

Alicia M Harrington
Examiner
Art Unit 2873